

**TENNESSEE DEPARTMENT OF REVENUE**  
**LETTER RULING #95-04**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Applicability of sales and use tax to an out-of-state mail-order company which has catalogues printed in Tennessee.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

**FACTS**

A Tennessee printer seeks to contract with an out-of-state mail-order company to print the mail-order company's catalogue in Tennessee. The mail-order company will ship its own paper and related items to Tennessee for use in the printing. The paper is stored at the

printing facility prior to printing. The mail-order company will not sell more than a minuscule portion of the catalogues (less than 1.00%). Rather, it will provide the catalogues free of charge to prospective customers. Quality control employees of the mail-order company will periodically visit Tennessee to inspect the printing process.

## QUESTIONS

1. Whether utilizing a Tennessee printer will cause Tennessee sales or use tax to be assessed on the catalogue itself.
2. Whether utilizing a Tennessee printer will require the mail-order company to collect Tennessee sales or use tax on items from the catalogue sold to Tennessee customers.
3. Whether utilizing a Tennessee printer will require the mail-order company to collect Tennessee sales or use tax on items from the catalogue sold to out-of-state customers.
4. Whether storage of the mail-order company's paper in Tennessee prior to printing use will create a taxable nexus for Tennessee sales and use tax purposes.

## RULINGS

1. Utilizing a Tennessee printer will not cause Tennessee sales or use tax to be assessed on the catalogue itself.
2. Utilizing a Tennessee printer will not require the mail-order company to collect Tennessee sales or use tax on items from the catalogue sold to Tennessee customers.
3. Utilizing a Tennessee printer will not require the mail-order company to collect Tennessee sales or use tax on items from the catalogue sold to out-of-state customers.
4. Storage of the mail-order company's paper in Tennessee prior to printing use will not create a taxable nexus for Tennessee sales and use tax purposes.

## ANALYSIS

1. Catalogues distributed in Tennessee are subject to sales and use tax unless an exemption applies. T.C.A. § 67-6-203(b); J.C. Penney Co., Inc. v. Olsen, 796 S.W.2d 943, 946 (Tenn. 1990).

T.C.A. § 67-6-329(a)(15) provides a specific exemption from sales and use tax for

[m]agazines and books which are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in Tennessee are those activities having to do with the printing, storage, labeling and/or

delivery to the United States mail or common carrier of such magazines or books, or the maintenance of raw materials with respect to such activities, notwithstanding that such seller or distributor maintains in Tennessee employees solely in connection with the production and quality control of such printing, storage, labeling and/or delivery, or in connection with news gathering and reporting.

This statute has clear application to [THE TAXPAYER]. Its catalogues which are sold to Tennessee consumers are not subject to sales or use tax because its only activities in Tennessee have to do with printing of catalogues and storage of raw supplies. Moreover, the presence of quality control employees in Tennessee is specifically permitted under this statute without subjecting the taxpayer to tax liability. Consequently, sales and use tax does not apply to the catalogues sold in Tennessee.

Catalogues which are distributed free of charge to prospective customers in Tennessee are also exempted from use tax. T.C.A. § 67-6-203(b) provides that “nexus to a taxpayer [shall not] be established through a relationship with a commercial printer or mailer having a presence in Tennessee; nor shall the commercial printer or mailer have the obligation of collecting any such tax.” Out-of-state mail-order sellers must have a physical presence in the taxing state in order for that state to constitutionally impose use tax collection responsibilities. Quill Corp. v. North Dakota By and Through Heitkamp, 112 S.Ct. 1904 (1992). [THE TAXPAYER]’ only presence within Tennessee, utilization of a Tennessee printer, is specifically exempted from creating a taxable nexus. Therefore, [THE TAXPAYER] has no responsibility to collect and remit use tax on the value of catalogues it distributes free of charge to Tennessee customers.

2. Items of tangible personal property which are not sold but are used in Tennessee are subject to Tennessee use tax. T.C.A. § 67-6-203(a). [THE TAXPAYER], however, does not have sufficient contacts with Tennessee in order to be held responsible for collecting and remitting use tax on sales of its products to Tennessee customers. [THE TAXPAYER]’ only physical presence within Tennessee is specifically exempted from creating a taxable nexus for use tax collection responsibilities. T.C.A. § 67-6-203(b). Therefore, [THE TAXPAYER] does not satisfy the physical presence requirement of Quill.

3. Tennessee does not attempt to tax items of tangible personal property which are neither sold nor used in Tennessee. Items sold by an out-of-state mail-order company to out-of state customers are thus not subject to Tennessee sales or use tax.

4. T.C.A. § 67-6-203(b) provides that nexus shall not be “established through a relationship with a commercial printer or mailer having a presence in Tennessee.” The storage of paper prior to printing use is part of the [THE TAXPAYER]’ “relationship” with the printer. Storage of paper prior to printing, therefore, does not create tax collection responsibilities for the same reasons enunciated under section 1 of this ruling.

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APPROVED: Ruth E. Johnson  
Commissioner of Revenue

DATE: 2/1/95